IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF OKLAHOMA

State of Oklahoma, et al. Plaintiffs, vs. Tyson Foods, Inc., et al., Defendants.	**Case No. 4:05-cv-00329-GKF-PJC**

DEFENDANTS' REPLY IN SUPPORT OF JOINT MOTION TO EXCLUDE TESTIMONY OF TODD KING (DKT. 2068)

Defendants submit this reply in support of their challenge to Plaintiffs' remediation expert Todd King (Dkt. No. 2068) and in opposition to Plaintiffs' response (Dkt. No. 2196).[1]

Plaintiffs' opposition fails in the straightforward task it needed to fulfill: to justify Mr. King's methodology and underlying data. Instead, Plaintiffs try to justify King's work by ignoring contradictory portions of King's own report, while couching Defendants' motion as attacking King's *conclusions*. Worse, Plaintiffs attempt to justify what they themselves describe as a "preliminary" evaluation of "a broad range of remedial actions that could potentially address the injuries identified by the State's experts" as somehow definitive enough to support their request for a wide-sweeping injunction that is mandatory, affirmative, and permanent. (Opp'n at 6-7: Dkt. No. 2196.) Plaintiffs also attempt – without a single supporting citation – to shift the burden of proving the worth of such an injunction onto Defendants and this Court. (Id. at 7-8.)

ARGUMENT

Plaintiffs carry the burden to prove that "the method employed by [Mr. King] in reaching the conclusion is scientifically sound and that the opinion is based on facts that satisfy Rule 702's reliability requirements," by establishing that the opinion has been developed in a scientifically sound and methodologically reliable fashion. Goebel v. Denver & Rio Grande Western R.R., 346 F.3d 987, 991 (10th Cir. 2003). In turn, to fulfill its gatekeeper duty, this Court must assess the reasoning and methodology underlying Mr. King's opinion and determine whether it is both scientifically valid and applicable to our particular set of facts. Id.

---

[1] Notably, Plaintiffs concede that they "will not proffer Mr. King to opine on the issues of causation and injury." (Pls.' Opp'n at 7: Dkt. No. 2196.) Because Mr. King's report contains numerous opinions on causation and injury, the Court should grant as unopposed the portion of Defendants' motion seeking to bar such testimony. (See, e.g., Defs.' Mot. at 21-23 (discussing King's causation and injury opinions generally); id. at 15 (discussing King's nitrate causation opinions): Dkt. No. 2068.)

No expert may offer opinion testimony at trial unless that testimony will assist the factfinder in understanding the evidence or determining facts in issue. Fed. R. Evid. 702. Expert opinion testimony must be grounded in sound science and cannot be based on "subjective belief or unsupported speculation." Daubert v. Merrell Dow Pharms., 509 U.S. 579, 590 (1993) Likewise, an expert's opinion cannot lack a reliable factual or scientific basis. Kumho Tire Co. v. Carmichael, 526 U.S. 137, 147-48 (1999). Because Mr. King's analysis is grounded in unsupported speculation and (relatedly) much of his data lacks a reliable factual basis, the Court should bar his testimony at trial. See, e.g., In re Paoli R.R. Yard PCB Litig., 35 F.3d 717, 745 (3d Cir. 1994) ("[A]ny step that renders the analysis unreliable ... renders the expert's testimony inadmissible").

Further, Mr. King's testimony fails as unhelpful under Rule 702 because it does nothing to prove the propriety of the mandatory permanent injunction Plaintiffs' seek. A party asking a court to issue an injunction must demonstrate that the injunction sought *will actually remedy* the harm claimed. See Humble Oil & Ref. Co. v. Harang, 262 F. Supp. 39, 42 (D. La. 1966) (holding that a court should "refrain[] from issuing an injunction unless the injunction 'will be effective to prevent the damage which it seeks to prevent'") (quoting Great N. Ry. Co. v. Local Union No. 2409, 140 F. Supp. 393, 396 (D. Mont. 1955)); Garrison v. Baker Hughes Oilfield Operations, Inc., 287 F.3d 955, 961 (10th Cir. 2002) ("It is well settled an injunction must be narrowly tailored to remedy the harm shown.") (citing Citizen Band Potawatomi Indian Tribe v. Okla. Tax Comm'n, 969 F.2d 943, 948 (10th Cir. 1992)). Because Plaintiffs readily admit that Mr. King's report is merely a "preliminary cost estimate" that "evaluates a broad range of remedial actions that could potentially address" alleged IRW injuries (Dkt. No. 2196 at 6-7, 21, emphasis added), his opinions are not definite enough to assist this Court in ruling on Plaintiffs'

request for injunctive relief.

A. The Speculative Nature of Mr. King's Analysis Renders his Opinions Inadmissible.

The Tenth Circuit has emphasized that to satisfy Rule 702 and Daubert, "the subject of the expert's testimony must be based on … actual knowledge and not subjective belief or unsupported speculation." Mitchell v. Gencorp Inc., 165 F.3d 778, 780 (10th Cir. 1999) (internal quotations and citations omitted). Here, Plaintiffs charge that Defendants "improperly mischaracterize" Mr. King's opinions as based on nothing more than "speculation as to things that *could* be done that *might* remedy Plaintiffs' alleged injuries." (Pls.' Opp'n at 8, 11: Dkt. No. 2196, quoting in part Defs.' Mot. at 10: Dkt. No. 2068.) Yet, Plaintiffs themselves describe King's work in nearly **the exact same way**. (Pls.' Opp'n at 6-7: "King's report evaluates a broad range of remedial actions that could potentially address the injuries identified ….")

To explain why "the State did not ask … Mr. King [to select final remedial options or prepare something more definitive than cost estimates]" (id. at 7), Plaintiffs argue both that

1) the speculative nature of Mr. King's opinion suffices, and

2) the report is actually definitive.

As to the first argument, Plaintiffs contend – without citation to supporting law of any sort – that it is Defendants' and the Court's shared burden to determine the scope of a remedial injunction, and that somehow Plaintiffs need not make a showing regarding the interim measures and remedial alternatives that would reduce or potentially eliminate the injuries that Plaintiffs allege are caused by the ground application of poultry litter. (Id.) Likewise, Plaintiffs contend – again without citation – that it is the Court's burden, without the aid of anything more than King's preliminary report, to determine the scope of the final monitoring and remedial measures that any injunction should include. (Id. at 7-8.)

Plaintiffs' argument ignores their own burden in the first instance to prove that the injunction they seek will actually remedy the harm claimed. See, e.g., Humble Oil, 262 F. Supp. at 42; Duckworth v. Franzen, 780 F.2d 645, 650 (7th Cir. 1985) ("If they proceed on a theory that they cannot substantiate factually, they are barred because of their failure of proof."). Further, because Plaintiffs chose to proceed without following CERCLA's NRD assessment regulations, they have undertaken the added burden of proving damages outside a CERCLA-mandated remediation. See 43 C.F.R. Part 11; New Mexico v GE, 467 F.3d 1223, 1242 (10th Cir. 2006).[2] In an effort to save Mr. King's conjecture from exclusion, Plaintiffs skip past this crucial step and focus their arguments on the Court's final implementation of injunctive relief. Regardless of the proof eventually necessary under Rule 65, however, Daubert forbids the use at trial of speculative expert opinions like those of Mr. King. See, e.g., Mitchell, 165 F.3d at 780. The Court should bar his testimony.

Attempting to have it both ways, Plaintiffs simultaneously argue that Mr. King's opinions are (1) "definitive" and (2) "preliminary … estimates" that "were never intended to be final …" (Pls.' Opp'n at 8, 21, 22: Dkt. No. 2196.) In support of the definitiveness claim, Plaintiffs argue that Mr. King's report was appropriately lengthy. (Id. at 8.) Length, of course, has nothing to do with reliability.

To downplay analytical errors that they must concede, Plaintiffs meanwhile argue that the

---

[2] CERCLA requires that natural resource damages be measured from the time of the release to the completion of restoration. 42 U.S.C. § 9607(a)(4)(A); see also H.R. Rep. No. 99-253(IV), at 50 (1985) ("the total amount of damages includes the cost of restoration and the value of all the lost uses of the damaged resources ... from the time of release up to the time of restoration"). Without a valid restoration plan, Plaintiffs have no way of knowing when restoration will be complete, and thus would have to speculate as to the end date for any CERCLA damages calculation. King's testimony therefore will not aid the trier of fact in determining damages should Plaintiffs prove a CERCLA claim.

Court should give Mr. King deference because his opinions were not "intended to be final." In particular, Plaintiffs admit that Mr. King's waste water treatment facilities ("WWTP") preliminary cost estimates are flawed by "a calculation error in converting EPA estimates to estimates for the IRW," and that King "may have mistakenly applied population categories to four of the utilities …" (Id. at 21.) Plaintiffs eschew these undeniable WWTP flaws as immaterial, arguing that "the cost estimates are just that – estimates – and were never intended to be final cost calculations." (Id.; see also id. at 21-22.) This begs the question of how King's estimates would assist the factfinder.

Plaintiffs also concede (as they must) that Mr. King admitted at his deposition that "there were data gaps that need to be filled with regard to the effectiveness of [some] remedial alternatives …." (Pls.' Opp'n at 8-9, citing King Dep. at 166: Dkt. No. 2196; see also id. at 10 discussing other data gaps admitted by King at his deposition.) Plaintiffs seem to argue that because these data gaps regard phosphorus inputs into Lake Tenkiller, they are of no consequence. (See id. at 8-10) Given that this is arguably the central issue in this litigation, Plaintiffs' argument fails on its face.[3]

Additionally, Plaintiffs try to downplay Mr. King's acknowledgment that he failed to compute an error rate for his cost estimates by arguing that Mr. King's analysis is nonetheless reliable because he also opined that a "typical" error rate covered an 80-point statistical swing and these calculations were "right around that area." (Id. at 11, n.6.) Far from justifying his analysis, Plaintiffs' argument highlights the inherently unreliable nature of Mr. King's proffered opinions. See Daubert, 509 U.S. at 593-94 (discussing known error rate as a reliability marker).

[3] The rest of Plaintiffs' attempts to parse Mr. King's words and explain away his data gaps and analytical failures (see, e.g., Pls.' Opp'n at 8-14: Dkt. No. 2196), are similarly unconvincing. Defendants respectfully submit that the deposition testimony speaks for itself.

In addition to all these other indices of unreliability, Mr. King *admits that cannot tell the factfinder whether the remediation measures he proposes will even solve the claimed problem.* (See Dkt. No. 2068-2 at 186-87, 266.) Because Mr. King's analysis is grounded in unsupported speculation riddled with admitted data gaps and errors, this Court should exclude his unreliable opinions. See, e.g., United States v. Fredette, 315 F.3d 1235, 1239 (10th Cir. 2003) (proper test for exclusion under Daubert is whether testimony rests on a reliable foundation); see also, e.g., Palmer v. Asarco Inc., 2007 U.S. Dist. LEXIS 57291, at*20-23 (N.D. Okla. Aug. 6, 2007) (excluding speculative expert testimony).

B. Because Real Data Gaps and Factual Flaws Underlie King's Analyses, and Because These Analyses Are Also Flawed, the Court Should Exclude his Testimony.

Plaintiffs attempt to shift attention away from Defendants' criticisms of Mr. King's methods and analyses as unreliable and speculative by suggesting that Defendants improperly seek to exclude Mr. King's *conclusions*, and that their criticisms of Mr. King's analyses and data are best left for cross-examination in front of the jury. (See Pls.' Opp'n at 16-19, citing, e.g., Valley View Angus Ranch v. Duke Energy Field Servs., LP., 2008 U.S. Dist. LEXIS 44181, at *9-10 (W.D. Okla. June 4, 2008).) Plaintiffs' argument and reliance here on Valley View are misplaced. Valley View addressed challenges to weaknesses in the experts' ultimate opinions instead of the experts' methodologies. 2008 U.S. Dist. LEXIS 44181, at *8 ("Plaintiffs do not challenge [the expert's] methodology."). Here, in contrast, Defendants directly challenge Mr. King's analyses.

Because Mr. King's faulty analyses cannot pass Daubert muster, the jury should never hear his speculation. In short, the problems with King's opinions go to admissibility, not weight. Defendants address additional particular portions of Mr. King's opinions in turn.

1. Private Wells

The inferences Mr. King draws from private well data and his various applications of those inferences to the facts at hand cannot survive Daubert because there are simply too many great analytical gaps. See, e.g., Hollander v. Sandoz Pharm. Corp., 289 F.3d 1193, 1205-06 (10th Cir. 2002). Among myriad problems: there is no valid scientific basis for King's assumption that the same ratio from his limited, singular water tests of a few wells could properly be extrapolated to apply across the entirety of the IRW; the confidence interval for his estimates is unknown; and his estimates are facially flawed because he did not consider how many of the total wells are non-functional and thus do not need repair or replacement. (See Defs.' Mot. at 13-15.)

Plaintiffs hinge their response to Defendants' criticisms on a single line in Mr. King's report, and ask the Court to essentially ignore all of Mr. King's contrary statements. Apparently recognizing that King's opinion regarding the necessity of repairing or replacing large numbers of IRW private wells is based on assumptions and suppositions that do not reflect reality, Plaintiffs contend that Defendants incorrectly assert that Mr. King concluded that 190 to 980 wells potentially *need* repair or replacement, arguing that King merely "estimated that 190 to 980 wells were potentially impacted …." (Pls.' Opp'n at 15: Dkt. No. 2196, citing King R. at 26: Dkt. No. 2068-3.) What Plaintiffs' response ignores is Mr. King's repeated reliance on his 190 to 980 potentially-impacted-wells number at page 26 of his report to figure drinking water remediation costs. Most strikingly, King uses that same exact 190-to-980 range to estimate the cost of replacing the wells with new, deeper wells (King R. § 4.3.3.3., page 29: Dkt. No. 2068-9), and for the cost of replacing the wells with bottled water (Id. § 4.3.3.2, page 28). Defendants wholly agree that King's figures do not show the actual number of wells that need replacement

or repair – indeed, that is a primary reason that all of King's water well opinions are unreliable. (See Defs.' Mot. at 12-15: Dkt. No. 2068.)

Because King's methodology for reaching his opinions about private wells is based on layers of assumption rather than grounded in fact or the scientific method, his methodology fails under Rule 702 and Daubert. See, e.g., Hollander, 289 F.3d at 1205-06. As a result, the Court should bar Mr. King from offering any opinions about private wells at trial.

2. Buffer Strips

Mr. King's analyses regarding buffer strips are unreliable because they rest on pure supposition and data unmoored from reality. Plaintiffs try to salvage this opinion by arguing that the weaknesses Defendants have identified go to the weight rather than the admissibility of Mr. King's testimony. (Pls.' Opp'n at 17.) To the contrary, Defendants attack Mr. King's methodologies, which is the heart of a Daubert exclusion motion. Examples of King's flawed analyses include his failure to employ in his calculations the actual market price of land in the IRW (or even land within Oklahoma or Arkansas); his failure to analyze how many property owners might realistically provide property for use as buffer strips; his failure to factor the number of buffer strips already in existence; his failure to consider which fields adjacent to proposed buffer strips are actively fertilized with poultry litter; and his failure to ground his estimated maintenance costs in any sort of scientific source, relying instead only on his own *ipse dixit*. (See Defs.' Mot. at 15-17: Dkt. No. 2068.)

In the face of so many analytical failures and data gaps, Mr. King admitted at his deposition that, as with his opinions concerning the remediation of Lake Tenkiller, he could not articulate a recommendation to the Court on the purchase and maintenance of buffer strips. (See King Dep. at 165: Dkt. No. 2068-2.) Daubert requires that expert opinions be reliable and

grounded on sufficient data to support them. As the gatekeeper, this Court should preclude Mr. King from offering at trial any of his unreliable, indefinite, and unhelpful buffer strip opinions.

3. Water Treatment Facilities & Disinfection Byproducts

Defendants challenge Mr. King's unreliable analyses regarding municipal WWTPs on several grounds, including his unfounded blanket assumption that all plants required upgrading due to disinfection byproducts ("DBPs") – without having considered whether any such plants in fact need such upgrading. (Defs.' Mot. at 17-20: Dkt. No. 2068.) In response, Plaintiffs insist that "Mr. King did not opine that all municipal water treatment facilities need to be upgraded," and point to Mr. King's deposition testimony that he did not "make a determination that a particular wastewater treatment plant needed remediation." (Pls.' Opp'n at 21: Dkt. No. 2196.) Far from undercutting Defendants' criticism, Plaintiffs' argument proves the point. The quoted testimony shows that Mr. King undertook no analysis as to whether any particular WWTP in fact needed an upgrade. This basic failure in his underlying methodology renders King's WWTP opinions inadmissible. See, e.g., In re Paoli, 35 F.3d at 745; see also Joiner, 522 U.S. at 146.

Further, Plaintiffs also do not dispute that Mr. King lacks educational experience in drinking water processes, and as noted above, concede that "he made a calculation error in concerting EPA estimates for the IRW and may have mistakenly applied population categories …." (Pls.' Opp'n at 21, 22: Dkt. No. 2196.) For all of these reasons, the Court should exclude King's unreliable and unfit WWTP opinions at trial.

4. Litter Landfills

Defendants take issue with several points in Mr. King's analysis regarding his proposal to landfill poultry litter, and this reply does not delve into the inherently contradictory nature of that proposal given Plaintiffs' insistence the litter constitutes a hazardous waste. However,

Defendants stress that King's opinion on the cost of such landfilling is really no *opinion* at all but simple arithmetic, and should be struck. (See Defs.' Mot. at 20: Dkt. No. 2068.)

Expert opinions that "merely recite facts" are inadmissible under Rules 702 and 403 because such opinions are not helpful (since the jurors can themselves understand the facts), are cumulative, and certain to waste time. United States v. Rodriguez-Felix, 450 F.3d 1117, 1123, n.2 (10th Cir. 2006); In re Rezulin Prods. Liab. Litig., 309 F. Supp. 2d 531, 546, 550 (S.D.N.Y. 2004). In addition, such "opinions" carry the real potential of misleading the jury because of the danger that a jury will place undue weight on facts recited by an "expert." See, e.g., Daubert, 509 U.S. at 595 (expressing concern over the potential misleading effect of expert testimony). Thus, the Court should preclude Mr. King from "opining" on the costs of litter landfilling.

5. King's Reliance on Other Experts

Although Defendants do not contest that experts may rely on other experts commonly relied upon in their field, Plaintiffs must do more than tout Mr. King's subjective beliefs about such reliance to withstand Daubert scrutiny. See Mitchell v. Gencorp, Inc., 165 F.3d 778, 781 (10th Cir. 1999) ("The expert's assurance that the methodology and support data is reliable will not suffice."). Because Plaintiffs rely solely on Mr. King's assurances that his reliance on Fisher, Cooke, and Engel is "common" (see Pls.' Opp'n at 23-25: Dkt. No. 2196), their argument fails.

CONCLUSION

For all of these reasons, Plaintiffs have not and cannot meet their burden to prove that King's opinions are sufficiently reliable and helpful for use at trial. Because Defendants have demonstrated the flaws imbedded throughout King's analyses, the Court should grant their motion to bar his opinion testimony in its entirety.

Date: June 19, 2009

RHODES, HIERONYMUS, JONES,
TUCKER & GABLE, PLLC

By: _____
John H. Tucker, OBA #9110
Theresa Noble Hill, OBA #19119
100 W. Fifth St., Ste. 400 (74103-4287)
P.O. Box 21100
Tulsa, Oklahoma 74121-1100
Tel: (918) 582-1173
Fax: (918) 592-3390

FAEGRE & BENSON LLP
Delmar R. Ehrich
Bruce Jones
Krisann C. Kleibacker Lee
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402-3901
Tel: (612) 766-7000
Fax: (612) 766-1600

Attorneys for Defendants Cargill, Inc. and Cargill Turkey Production, LLC

BY: *s/ Michael Bond*
(SIGNED BY FILING ATTORNEY WITH PERMISSION)

MICHAEL BOND, AR Bar #2003114
ERIN WALKER THOMPSON, AR Bar #2005250
DUSTIN DARST, AR Bar #2008141
KUTAK ROCK LLP
234 East Millsap Road Suite 400
Fayetteville, AR 72703-4099
Telephone: (479) 973-4200
Facsimile: (479) 973-0007

-AND-

STEPHEN L. JANTZEN, OBA #16247
PATRICK M. RYAN, OBA #7864
PAULA M. BUCHWALD, OBA #20464
RYAN, WIALEY & COLDIRON, P.C.
119 N. Robinson
900 Robinson Renaissance
Oklahoma City, OK 73102
Telephone: (405) 239-6040
Facsimile: (405) 239-6766
E-Mail: sjantzen@ryanwhaley.com

-AND-

THOMAS C. GREEN
MARK D. HOPSON
TIMOTHY K. WEBSTER
JAY T. JORGENSEN
GORDON D. TODD
SIDLEY AUSTIN LLP
1501 K Street, N.W.
Washington, D.C. 20005-1401
Telephone: (202) 736-8000
Facsimile: (202) 736-8711

ATTORNEYS FOR TYSON FOODS, INC.; TYSON POULTRY, INC.; TYSON CHICKEN, INC; AND COBB-VANTRESS, INC.

BY: *s/ A. Scott McDaniel*
(SIGNED BY FILING ATTORNEY WITH PERMISSION)
A. SCOTT MCDANIEL, OBA #16460
NICOLE LONGWELL, OBA #18771
PHILIP D. HIXON, OBA #19121
McDaniel, Hixon, Longwell & Acord, PLLC
320 S. Boston Avenue, Suite 700
Tulsa, OK 74103

-AND-

SHERRY P. BARTLEY, AR BAR #79009
MITCHELL WILLIAMS, SELIG,
GATES & WOODYARD, PLLC
425 W. Capitol Avenue, Suite 1800
Little Rock, AR 72201

ATTORNEYS FOR PETERSON FARMS, INC.

BY: *s/ Randall E. Rose*
(SIGNED BY FILING ATTORNEY WITH PERMISSION)
RANDALL E. ROSE, OBA #7753
GEORGE W. OWENS, ESQ.
OWENS LAW F P.C.
234W. 13 Street
Tulsa, OK 74119

-AND-

JAMES MARTIN GRAVES, ESQ.
GARY V. WEEKS, ESQ.
BASSETT LAW FIRM
POB 3618
Fayetteville, AR 72702-3618

ATTORNEYS FOR GEORGE'S, INC. AND GEORGE'S FARMS, INC.

BY: *s/ John R. Elrod*
SIGNED BY FILING ATTORNEY WITH PERMISSION)
JOHN R. ELROD
VICKI BRONSON, OBA #20574
BRUCE WAYNE FREEMAN
CONNER & WINTERS, L.L.P.
100 W. Central Street, Suite 200
Fayetteville, AR 72701

ATTORNEYS FOR SIMMONS FOODS, INC.

BY: *s/ Robert P. Redemann*
(SIGNED BY FILING ATTORNEY WITH PERMISSION)
ROBERT P. REDEMANN, OBA #7454
LAWRENCE W. ZERINGUE, ESQ.
DAVID C. SENGER, OBA #18830
PERRINE, MCGIVERN, REDEMANN, REID, BARRY & TAYLOR, P.L.L.C.
Post Office Box 1710
Tulsa, OK 74101-1710

-AND-

ROBERT E. SANDERS
STEPHEN WILLIAMS
YOUNG, WILLIAMS, HENDERSON & FUSILIER
Post Office Box 23059
Jackson, MS 39225-3059

ATTORNEYS FOR CAL-MAINE FARMS, INC. AND CAL-MAINE FOODS, INC.

CERTIFICATE OF SERVICE

I certify that on the 19th day of June, 2009, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

W. A. Drew Edmondson, Attorney General	drew_edmondson@oag.state.ok.us
Kelly Hunter Burch, Assistant Attorney General	kelly_burch@oag.state.ok.us
Melvin David Riggs	driggs@riggsabney.com
Joseph P. Lennart	jlennart@riggsabney.com
Richard T. Garren	rgarren@riggsabney.com
Sharon K. Weaver	sweaver@riggsabney.com
Robert Allen Nance	rnance@riggsabney.com
Dorothy Sharon Gentry	sgentry@riggsabney.com
David P. Page	dpage@riggsabney.com
Riggs Abney Neal Turpen Orbison & Lewis, P.C.	
Louis W. Bullock	lbullock@bullock-blakemore.com
Bullock, Bullock and Blakemore, PLLC	
William H. Narwold	bnarwold@motleyrice.com
Elizabeth C. Ward	lward@motleyrice.com
Frederick C. Baker	fbaker@motleyrice.com
Lee M. Heath	lheath@motleyrice.com
Elizabeth Claire Xidis	cxidis@motleyrice.com
Fidelma L Fitzpatrick	ffitzpatrick@motelyrice.com
Motley Rice LLC	
COUNSEL FOR PLAINTIFFS	
Stephen L. Jantzen	sjantzen@ryanwhaley.com
Paula M. Buchwald	pbuchwald@ryanwhaley.com
Patrick Michael Ryan	pryan@ryanwhaley.com
Ryan, Whaley & Coldiron, P.C.	
Mark D. Hopson	mhopson@sidley.com
Jay Thomas Jorgensen	jjorgensen@sidley.com
Timothy K. Webster	twebster@sidley.com
Gordon D. Todd	gtodd@sidley.com
Sidley Austin LLP	
L Bryan Burns	bryan.burs@tyson.com
Robert W. George	robert.george@tyson.com
Michael R. Bond	michael.bond@kutakrock.com
Erin W. Thompson	erin.thompson@kutakrock.com
Dustin R. Darst	dustin.dartst@kutakrock.com
Kutack Rock LLP	

COUNSEL FOR TYSON FOODS, INC., TYSON POULTRY, INC., TYSON CHICKEN, INC.; AND COBB-VANTRESS, INC.

R. Thomas Lay rtl@kiralaw.com
Kerr, Irvine, Rhodes & Ables

Jennifer S. Griffin jgriffin@lathropgage.com
Lathrop & Gage, L.C.
COUNSEL FOR WILLOW BROOK FOODS, INC.

Robert P. Redemann rredemann@pmrlaw.net
Lawrence W. Zeringue lzeringue@pmrlaw.net
David C .Senger dsenger@pmrlaw.net
Perrine, McGivern, Redemann, Reid, Berry & Taylor, PLLC

Robert E. Sanders rsanders@youngwilliams.com
E. Stephen Williams steve.williams@youngwilliams.com
Young Williams P.A.
COUNSEL FOR CAL-MAINE FOODS, INC. AND CAL-MAINE FARMS, INC.

George W. Owens gwo@owenslawfirmpc.com
Randall E. Rose rer@owenslawfirmpc.com
The Owens Law Firm, P.C.

James M. Graves jgraves@bassettlawfirm.com
Gary V. Weeks gweeks@bassettlawfirm.com
Woody Bassett wbassett@bassettlawfirm.com
K.C.Dupps Tucker kctucker@bassettlawfirm.com
Bassett Law Firm
COUNSEL FOR GEORGE'S INC. AND GEORGE'S FARMS, INC.

John R. Elrod jelrod@cwlaw.com
Vicki Bronson vbronson@cwlaw.com
Bruce W. Freeman bfreeman@cwlaw.com
P. Joshua Wisley jwisley@cwlaw.com
Conner & Winters, LLLP
COUNSEL FOR SIMMONS FOODS, INC.

A. Scott McDaniel smcdaniel@mhla-law.com
Nicole M. Longwell nlongwell@mhla-law.com
Philip D. Hixon phixon@mhla-law.com
Craig Mirkes cmirkes@mhla-law.com
McDaniel, Hixon, Longwell & Acord, PLLC

Sherry P. Bartley sbartley@mwsgw.com
Mitchell Williams Selig Gates & Woodyard
COUNSEL FOR PETERSON FARMS, INC.

Michael D. Graves mgraves@hallestill.com
Dale Kenyon Williams, Jr. kwilliams@hallestill.com
COUNSEL FOR CERTAIN POULTRY GROWERS

I also hereby certify that I served the attached documents by United States Postal Service, proper postage paid, on the following who are not registered participants of the ECF System:

Thomas C. Green
Sidley Austin Brown & Wood LLP
1501 K Street NW
Washington, DC 20005
COUNSEL FOR TYSON FOODS, INC., TYSON POULTRY, INC., TYSON CHICKEN, INC.; AND COBB-VANTRESS, INC.

s/ John H. Tucker